

DARRYL FULTON,  
Plaintiff,  
v.  
JOHN GORSUCH, CLARENCE  
MORGAN, and DUKE UNIVERSITY,  
Defendants.

This cause comes before the Court on the memorandum and recommendation of United States Magistrate Judge Kimberly A. Swank. [DE 10]. Plaintiff, who proceeds in this action *pro se*, has objected to the memorandum and recommendation (M&R), filed a motion to reconsider, and filed a motion in letter form seeking a stay.

Plaintiff's particularized complaint alleges claims of employment discrimination on the basis of race, age, and disability against his employer, Duke University. Plaintiff recounts a continuing conflict with his managers, defendants Gorsuch and Morgan, and alleges that they treated him unfairly and subjected him to unfavorable work conditions. Plaintiff has filed his Equal Employment Opportunity Commission charge in support of his claims. [DE 8 & 9].

A district court is required to review de novo those portions of an M&R to which a party timely files specific objections or where there is plain error. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 149–50 (1985). Plaintiff has timely noted his objection to the M&R and in his motion for reconsideration provides additional allegations of disparate treatment by his

supervisors. [DE 11 & 12].<sup>1</sup> Plaintiff's objection does not specifically address, however, the recommendation of Magistrate Judge Swank that the individual defendants must be dismissed because they are not proper defendants under Title VII, the Age Discrimination in Employment Act, or the Americans with Disabilities Act. *See* [DE 10 at 5].

Plaintiff's additional allegations regarding his treatment by defendants Gorsuch and Morgan do not impact the magistrate judge's recommendation, and the Court ADOPTS the recommendation in full. Duke University is the proper defendant in this action, and the case will proceed against it.

Plaintiff has also filed a motion in letter form requesting "a stay on having to file a complaint against Duke University, once I am to prevail by presenting new evidence against John Gorsuch and Clarence Morgan." As discussed above, plaintiff's employer is the only proper defendant against which his employment discrimination claims may proceed. The motion to stay is denied.

However, plaintiff's allegations now span several different documents. In light of plaintiff's *pro se* status, the Court will permit plaintiff to file a single amended complaint against Duke University which incorporates the allegations and claims contained in his particularized complaint, improperly styled as a motion to amend, and his allegations contained in the motion to reconsider. Plaintiff is to attach his EEOC charge to his amended complaint. Once the amended complaint and properly completed summons have been received by the Clerk of Court, *see* [DE 10 at 6], the Clerk shall file plaintiff's amended complaint and issue the summons, and the United States Marshal shall serve the summons, a copy of plaintiff's amended complaint, and a copy of this order on defendant Duke University.

---

<sup>1</sup> The Court construes plaintiff's motion for reconsideration as part of his objection to the M&R.

### CONCLUSION

Accordingly, for the foregoing reasons, the M&R is ADOPTED. Defendants Gorsuch and Morgan are DISMISSED. Plaintiff shall file a single amended complaint not later than October 28, 2020. Plaintiff shall further return completed summons for issuance. Upon receipt of plaintiff's amended complaint and completed summons, the Clerk of Court shall issue the summons and provide a copy of the amended complaint, summons, and this order to the United States Marshal for service.

SO ORDERED, this 16 day of October, 2020.

  
TERRENCE W. BOYLE  
CHIEF UNITED STATES DISTRICT JUDGE